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In re Application of :
Woo Hyuk Choi : DECISION ON PETITION TO
Application Number: 09/843781 : WITHDRAW HOLDING OF
Filing Date: 04/30/2001 : ABANDONMENT
Attorney Docket Number: 041501- :
5423 :
:

This is a decision in reference to the "PETITION TO WITHDRAW ERRONEOUS NOTICE OF ABANDONMENT," filed on June 13, 2008, which is treated as a petition to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application was held abandoned due to termination of proceedings after the mailing of the Board of Patent Appeals and Interferences (BPAI) Decision affirming the examiner mailed on March 25, 2008. A Notice of Abandonment was mailed on June 3, 2008, stating the application was abandoned because the period for seeking court review of the decision had expired and there are no allowed claims.¹

Petitioner asserts that the Notice of Abandonment is in error, as Claims 1, 3-8, 17-19, 21-24, and 26 are allowed.

A review of the BPAI Decision reveals that it states Claims 1, 3-8, 17-19, 21-24, and 26 have been allowed in the Examiner's Answer.

37 CFR 1.197 states:

(a) Return of jurisdiction from the Board of Patent Appeals and Interferences. Jurisdiction over an application or patent under ex parte reexamination proceeding passes to the examiner after a decision by the Board of Patent Appeals and Interferences upon transmittal of the file to the examiner, subject to

¹ Office communication from the examiner was mailed June 11, 2008, stating that the holding of abandonment should be withdrawn, per the BPAI decision of March 25, 2008.

appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the application or patent under *ex parte* reexamination proceeding may require, to carry into effect the decision of the Board of Patent Appeals and Interferences.

(b) Termination of proceedings.

(1) Proceedings on an application are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except:

- (i) Where claims stand allowed in an application; or
- (ii) Where the nature of the decision requires further action by the examiner.

MPEP 1214.06 states, in pertinent part, that when the time for seeking court review (plus 2 weeks to allow for information as to the filing of an appeal or civil action, if any, to reach the examiner) has passed without such review being sought, the examiner must take up the application for consideration. The situations which can arise will involve one or more of the following circumstances: II. CLAIMS STAND ALLOWED The appellant is not required to file a reply. The examiner issues the application or *ex parte* reexamination certificate on the claims which stand allowed.

Accordingly, since claims stand allowed, proceedings were not terminated, and there was no abandonment in fact.

The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

The application is referred to Technology Center Art Unit 2871 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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